IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2251 OF 2005

Ambaji Gopal Mali ..Petitioner

Vs.

Shri.Bandu Bhokya Mhatre
and Ors. ..Respondents

....

Mr.S.G.Surana for Petitioner
Mr.D.A.Patil AGP for Respondent NO.3

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 20,2005

P.C.:

1. Heard Mr.Surana, the learned counsel for the Petitioner and Mr.Patil, the learned A.G.P. for Respondent No.3.

2. Respondent Nos.1 and 2 were the owners of the property being Survey No. 615/6, 661/1 and 615/7 situated at village Panvel, District Raigad and by Notification issued under Section 4 of the Land Acquisition Act, 1984 published on 3.2.1970, the said property came to be acquired by the State Govt. and an Award under Section 11 of the Act was passed on 30.10.1981. Some of the claimants whose land was also acquired along with land of the Respondent Nos.1

and 2, filed enhancement application under section 18 of the Land Acquisition Act and the same reference came to be decided by fixing the market value of the acquired land at the rate of Rs.32 per square mt.and in addition, other statutory benefits like interest, solatium etc. were also granted. Respondent Nos.1 and 2 had not sought enhancement by filing application under Section 18 of the Act and therefore, on getting the knowledge of Award passed by the Reference Court at the instance of the similarly placed land owners, they submitted an application under Section 28-A(1) of the said Act. The Respondent no.3 passed an award without increasing the compensation and infact, he passed a nil award. A group of writ petitions were filed before this Court and the same were disposed of by the Division Bench on 7.9.2000 in terms of the minutes of the order. The nil awards passed by the SLAO were quashed and set aside and the applications under Section 28-A submitted by the Claimants were directed to be decided by him in accordance with law. Instead of passing a fresh award on the lines of the market value fixed by the Reference Court, the SLAO again passed a nil award and the Respondents Nos.1 and 2 submitted applications under Section 28-A(3) for reference which have been allowed by the SLAO and consequently, the Court passed an Award on 29.4.2002 in LAR No. 1543 of 2000.

3. The present petitioners filed an application which came to be registered as Civil Misc. Application No. 148 of 2004 before the Reference Court and prayed for permanent injunction against the Special Land Acquisition Officer from disbursing the enhanced compensation amount on the basis of the Award passed on 29.4.2000. At this juncture, the Special Land Acquisition Officer filed an application at Exh.16 for dismissal of LAR No.32 of 2002 which was registered on the basis of reference made by the SLAO on an application filed under Section 28-A(1) on behalf of the present Respondent nos.1 and 2. By the impugned order dated 28.3.2005 the learned Civil Judge SD at Alibag was pleased to allow the application at Exh.16 and consequently, LAR No.32 of 2002 is dismissed as withdrawn. In addition, Misc. Application No. 148 of 2004 filed by the present Petitioner has also been dismissed.

4. The impugned order does not call for any interference and by filing an application at Exh.16, the Respondent no.3 indicated that he could not have referred the fresh application filed by or on behalf of Respondents Nos.1 and 2 under Section 28-A(3) of the Land Acquisition Act and consequently, the LAR No. 32 of 2002 could not have been registered. The decision of the reference Court in allowing the

application at Exh.16 is infact, a permission granted to the SLAO to correct his own mistake. The Petitioner was acting in the capacity as power of attorney holder for Respondents Nos.1 and 2 and he could not have sought review of the Award dated 29.4.2002 though in law, the said Award passed by the Reference Court in LAR No. 1643 of 2000 was uncalled for. Pursuant to the order passed by this Court (Division Bench) in terms of minutes of the order, it was imperative for the SLAO to decide the application under Section 28-A and calculate the compensation payable to the Respondents Nos.1 and 2 on the basis of the Award passed under Section 18 of the Land Acquisition Act. There was no occasion for him to make a reference to the Court below. The SLAO acted in total disregard of the directions issued by this Court and contrary to the provisions of Section 28-A(1) of the Act.

5. There is no reason to cause interference in the impugned order and therefore, the petition is rejected summarily.

[B.H.MARLAPALLE,J.]